

APPENDIX ROW

TABLE OF CONTENTS

1. INTRODUCTION.....	3
2. DEFINITIONS.....	3
3. GENERAL REQUIREMENTS	4
4. REQUESTS FOR SPACE.....	5
5. REQUESTS FOR DRAWINGS	5
6. REQUESTS FOR INFORMATION.....	6
7. MAKE READY WORK.....	6
8. POLE ATTACHMENTS	6
9. CONDUITS	7
10. INNERDUCTS.....	7
11. ACCESS TO PRIVATE EASEMENTS	8
12. DISPUTE RESOLUTION.....	8
13. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS.....	9

EXHIBIT A

1. GENERAL.....	1
2. PRIORITIZING.....	1
3. POINT OF CONTACT.....	2

APPENDIX ROW

1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions for Rights of Way (ROW), Conduits and Pole.
- 1.2 Pacific Bell Telephone Company (**PACIFIC**) is an ILEC doing business in California.

2. DEFINITIONS

2.1 Pole

- 2.1.1 The term “pole” refers only to poles (and associated anchors) which are owned or controlled by **PACIFIC** and does not include cables and other telecommunications equipment attached to a pole.

2.2 Conduit

- 2.2.1 Conduits are tubes or structures containing one or more ducts and/or innerducts and used to enclose cables, wires, and associated transmission equipment. The term “conduit” refers only to conduit structures (including ducts, manholes, and handholes) and space within those structures and does not include: (a) cables and other telecommunications equipment located within conduit structures; or (b) central office vaults, controlled environment vaults, or other **PACIFIC** structures (such as huts and cabinets) which branch off from or are connected to **PACIFIC**'S conduit.

2.3 Right of Way

- 2.3.1 A Right of Way is the right to use the land or other property of another Party to place poles, conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes or other locations.

3. GENERAL REQUIREMENTS

- 3.1 **PACIFIC** shall make its Poles, Ducts, Conduit and Rights of Way (Collectively ROW) available to CLEC through Agreements consistent with applicable regulations of the Commission and this Appendix ROW.
- 3.2 **PACIFIC** shall provide CLEC with non-discriminatory and competitively neutral access, on a first-come, first-served basis, to ROW that **PACIFIC** owns or controls.
- 3.3 Upon request, **PACIFIC** shall provide CLEC reasonable access on a non-discriminatory and competitively neutral basis to building entrance facilities (including but not limited to conduit, manholes, equipment rooms and telephone closets) that are owned or controlled by **PACIFIC**, provided the security of **PACIFIC**'s facilities is maintained at all times. For some locations, CLEC personnel must be escorted, and the Parties will negotiate a reasonable arrangement, including administrative costs, if any, for such escorted access.
- 3.4 **PACIFIC** may not favor itself in granting access to ROW. **PACIFIC** shall not deny a request from CLEC for access to ROW on the basis that such space is reserved for **PACIFIC**'s future business needs, except as provided in Sections 3.5 and 3.6.
- 3.5 **PACIFIC** may reserve capacity for projects for which plans are in place for actual utilization or construction to begin within nine months of CLEC's request for access. If substantial construction activity is not commenced within such nine month period, **PACIFIC** must grant access to CLEC, unless the delay is attributable to severely inclement weather or the delay of a governmental agency in issuing a need permit. In the event of such delay, **PACIFIC** shall have an additional period of nine months to complete construction.
- 3.6 The duties of **PACIFIC** described in Sections 3.5 shall be subject to expansion or contraction in accordance with rules adopted by the Commission that constitute regulation of rates, terms and conditions for pole attachments within the meaning of Section 224(c)(3) of the Act.
- 3.7 **PACIFIC** may designate one innerduct in a multi-duct conduit (or, one duct, in the case of a multi-duct conduit where large sized copper cables are housed) for maintenance purposes, for the benefit of all users of the conduit. No Party shall use the maintenance innerduct (or the maintenance duct in the case of conduit housing copper cables) except for maintenance purposes.

- 3.8 In cases where PACIFIC reasonably believes that there is insufficient capacity to grant a request from CLEC for access to ROW, PACIFIC must take all reasonable steps to accommodate CLEC's request and explore potential accommodations in good faith with CLEC.
- 3.9 In the event of an emergency affecting ROW made available by PACIFIC to CLEC, PACIFIC shall follow the mutually agreed upon Emergency Restoration Procedures attached to this Appendix ROW as Exhibit A.
- 3.10 Upon request of CLEC, PACIFIC shall provide to CLEC the names and numbers of the regional Single Points of Contact (SPOC) for administering all structure licensing and ROW Appendix within each defined geographical area.
- 3.11 To obtain access to PACIFIC's poles and conduits as described below, CLEC must execute a separate Structure License Agreement with PACIFIC.

4. REQUESTS FOR SPACE

- 4.1 Upon being presented with a CLEC's written request for access to PACIFIC'S conduits or poles, PACIFIC will accept or reject CLEC's request in writing as soon as possible, but within forty-five (45) days, unless PACIFIC cannot accept or reject within forty-five (45) days due to the complexity of the request. In such cases, the Parties will mutually agree upon an appropriate extension of time.
- 4.2 If PACIFIC denies an application by CLEC for conduit or pole space, its denial must be specific, and include all relevant evidence or information supporting the denial.

5. REQUESTS FOR DRAWINGS

- 5.1 At CLEC's request, PACIFIC shall provide CLEC with detailed engineering records and drawings of conduit, poles and other ROW paths in selected areas as specified by CLEC within a reasonable time frame.
- 5.2 PACIFIC shall allow personnel designated by CLEC to examine conduit system or pole line diagrams at PACIFIC's offices, provided that, for security reasons, a non-disclosure Agreement is signed and CLEC's representative is limited to a specific area within the PACIFIC office or PACIFIC will make copies of such documents for CLEC at CLEC's expense, or a mutually agreed upon third Party will be permitted to examine the diagrams.

6. REQUESTS FOR INFORMATION

- 6.1 CLEC may submit a written request for information to PACIFIC before submitting a request for conduit or pole space in a specified location.
- 6.2 PACIFIC shall provide information regarding the availability and condition of conduit or pole attachments within ten (10) business days of CLEC's written request for a records based answer and twenty (20) business days of CLEC's request for a field based answer. In the event CLEC's written request seeks information about the availability of more than five (5) miles of conduit or more than 500 poles, PACIFIC shall: (1) provide an initial response within ten (10) business days; (2) use reasonable best efforts to complete its response within thirty (30) business days; and (3) if PACIFIC is unable to complete its response within thirty (30) business days or if the parties are unable to agree upon a mutually satisfactory long time period for PACIFIC's response, PACIFIC will hire outside contractors at CLEC's expense, not to exceed PACIFIC's customary charge for the same work, provided that before proceeding with such outside hiring, PACIFIC shall provide to CLEC the contractor's work order and hourly rate.
- 6.3 CLEC shall have the option to be present at the field based survey and PACIFIC shall provide CLEC at least twenty-four (24) hours notice prior to start of such field survey. By prior arrangement, PACIFIC shall allow CLEC personnel, accompanied by a PACIFIC escort, to enter manholes and view pole structures.

7. MAKE READY WORK

- 7.1 PACIFIC shall complete the "make ready work" required on poles or within conduit to enable CLEC to install its facilities. This work shall be accomplished by PACIFIC at a reasonable cost within thirty (30) business days, except that if PACIFIC requires longer than thirty (30) business days or if the parties are unable to agree upon a mutually satisfactory longer time period for completion of the make ready work, outside contractors may be hired at CLEC's expense to do the work. In that event, PACIFIC and CLEC shall confer and agree which Party shall hire the contractors. If CLEC hires the contractors, they must meet PACIFIC's reasonable standards. If PACIFIC hires the contractors, before proceeding with the work, PACIFIC shall provide to CLEC the contractor's work order and hourly rate, which shall not exceed PACIFIC's customary charge for the same work.

8. POLE ATTACHMENTS

- 8.1 Pole Attachments will be placed in the space on the pole designated for communications use. This space is generally located below electric supply circuits and excludes the neutral space between the electrical and communication space.
- 8.2 **PACIFIC** shall not attach, or permit other entities to attach, facilities on existing CLEC facilities without CLEC's prior written consent, except that such consent shall not be required for attachments to facilities such as arms and brackets that are designed for more than one cable.
- 8.3 CLEC may, at its option, make pole attachments using CLEC or CLEC-designated personnel. CLEC shall follow the methods and procedures for making pole attachments set forth in California Public Utilities Commission General Order No. 95 and any additional standards provided to CLEC by **PACIFIC**.

9. CONDUITS

- 9.1 To the extent that space is available as reasonably determined by **PACIFIC**, **PACIFIC** shall provide CLEC space in manholes for racking and storage of cable and other materials as requested by CLEC on a nondiscriminatory, first-come, first-served basis.
- 9.2 **PACIFIC** shall remove any retired cable from its conduit at CLEC's expense within a reasonable period of time if necessary to make conduit space available for CLEC.
- 9.3 Upon prior notice to **PACIFIC**, CLEC may conduct maintenance procedures in conduit space leased from **PACIFIC**. **PACIFIC** may dispatch a **PACIFIC** technician at CLEC's expense to oversee CLEC's work.
- 9.4 Subject to accepted industry safety and engineering standards, **PACIFIC** will permit manhole interconnections and breaking out of **PACIFIC** manholes (core boring) for the benefit of CLEC. **PACIFIC** may not limit new duct entrances to pre-cast knockouts, provided that CLEC must obtain certification of a professional structural engineer ensuring that modifications (other than pre-cast knockouts) will not adversely impact the structural integrity of the manhole.
- 9.5 Subject to accepted industry safety and engineering standards, **PACIFIC** will shall not restrict, withhold or unreasonably delay any modifications to conduit systems necessary to allow access to and/or egress from such systems.

10. INNERDUCTS

- 10.1 PACIFIC will permit CLEC, on a first-come, first-served basis, to license the use of innerducts in ducts in which PACIFIC already occupies as innerduct as long as one spare innerduct for maintenance purposes remains available. If an innerduct licensed by CLEC becomes defective, CLEC may use the spare maintenance innerduct as long as CLEC repairs the defective innerduct for use as a new maintenance spare as soon as possible.
- 10.2 Where spare inner duct does not exist, PACIFIC shall allow CLEC to install inner duct in a spare PACIFIC conduit, provided that CLEC complies with applicable law and PACIFIC's construction standards.

11. ACCESS TO PRIVATE EASEMENTS

- 11.1 PACIFIC shall not block any third Party assignment of ROW to CLEC.
- 11.2 To the extent space is available, PACIFIC shall provide access to ROWs it has obtained from a third Party to CLEC on a nondiscriminatory, first-come, first-served basis, provided that any underlying Agreement with such third Party permits PACIFIC to provide such access, and provided that CLEC agrees to indemnify PACIFIC for any liability arising out of such access or use.
- 11.3 PACIFIC will, upon request by CLEC, grant CLEC access to any private easement held by PACIFIC, in a mutually agreeable form of sub-easement, assignment or other appropriate access. PACIFIC's charge for such access shall be a pro rata portion of: (a) the charge paid by PACIFIC to the grantor of the easement; and (b) any other documented administrative and engineering costs incurred by PACIFIC in obtaining the original easement, both of which shall be determined on a case-by-case basis and calculated by taking into account: (i) the size of the area to be used by CLEC; and (ii) the number of users of PACIFIC's easement. CLEC shall also pay the reasonable documented administrative cost incurred by PACIFIC in processing such requests for access.

12. DISPUTE RESOLUTION

- 12.1 If the parties are unable to agree on a matter involving access by CLEC to a ROW, conduit, innerducts, pole, entrance facility or private easement owned or controlled by PACIFIC, either Party may submit the matter to the dispute resolution process set forth in the General Terms and Conditions of this Agreement or may invoke applicable dispute resolution procedures described in the Act and the FCC's *First Interconnection Order*, sections 1217 through 1231.

13. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 13.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

EXHIBIT A**EMERGENCY RESTORAL PROCEDURES****1. GENERAL**

- 1.1 In the event of an emergency, restoration procedures may be affected by the presence of CLEC facilities in or on PACIFIC structures. While PACIFIC maintains no responsibility for the repair of damaged CLEC facilities (except under a special maintenance contract), it must nonetheless control access to CLEC structures if restoral of affected facilities is to be achieved in an orderly fashion.

2. PRIORITIZING

- 2.1 Where PACIFIC and CLEC are involved in emergency restorals, access to PACIFIC's structures will be controlled by PACIFIC's Maintenance District Manager or his/her on-site representative according to the following guidelines:

2.2 Service Disruptions/Outages

- 2.2.1 While exercising its right to first access, PACIFIC should grant nondiscriminatory access to all occupants in or on its facilities and every effort should be made to accommodate as many occupants as is reasonably safe. Therefore, reasonable, simultaneous access will not be denied unless public or other safety considerations would prohibit such access.
- 2.2.2 Where simultaneous access is not possible, access will next be granted according to longevity in/on the structure (i.e., first in time, first in right).
- 2.2.3 Where longevity in the structure cannot be ascertained, access will be prioritized on a first come, first served basis.

2.3 Service Affecting

2.3.1 While exercising its right to first access, **PACIFIC** should grant nondiscriminatory access to all occupants in or on its facilities and every effort should be made to accommodate as many occupants as is reasonably safe. Therefore, reasonable, simultaneous access will not be denied unless public or other safety considerations would prohibit such access.

2.3.2 Where simultaneous access is not possible, access will next be granted to occupants according to the level of damage to its facilities and the likelihood that damage will result in service disruption. Where likelihood that damage will result is not clearly discernible, access will be granted according to longevity in/on the structure (i.e., first in time, first in right).

2.3.3 Where longevity in the structure cannot be ascertained, access will be prioritized a first come, first served basis.

3. **POINT OF CONTACT**

3.1 When an emergency situation arises which necessitates CLEC access to a manhole after **PACIFIC**'s normal business hours, CLEC should call **PACIFIC**'s Interconnection Service Center (ISC). All calls during normal business hours must be directed to the appropriate **PACIFIC** SPOC. For after-hours calls, **PACIFIC**'s ISC will contact the Maintenance Center responsible for after-hours coverage of the affected area. The maintenance supervisor contacted by the ISC will return CLEC's call and will arrange for access with on-call maintenance field personnel during the emergency condition.